IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

Bail Appl..No. 4481 of 2007()

CRIME NO.125/98 OF KURUPPAMPADY POLICE STATION

PETITIONER:

RIJI, S/O. VARGHESE,
THOTTUNGAL, PANIYELI, KOMBANAD VILLAGE,
VINGOOR PANCHAYAT, ERNAKULAM DISTRICT.RESUME

BY ADV. SMT.CHINCY GOPAKUMAR
SRI.ANWIN GOPAKUMAR

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
KURUPPAMPADY POLICE STATION, ERNAKULAM DISTRICT.

BY P.P. SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 25/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. NO. 4481 OF 2007

Dated this the 25th day of July, 2007

ORDER

Application for anticipatory bail. The petitioner is the 1st accused. He faces allegations under the Kerala Abkari Act. A crime was registered as early as in 1998. The crux of the allegations is that on 25/5/98 at 11.15 p.m. the petitioner along with three others was found engaged in the act of illicit distillation of arrack. The petitioner could not be apprehended as he allegedly took to his heels before the detecting party intercepted him. Investigation was conducted. Final report was filed. The petitioner was not available for trial. The co-accused, who were available, did face the trial. They have been found not guilty and acquitted, it is submitted. The petitioner was not available here as he was working at Mumbai. He now has come to Kerala. He finds coercive processes issued by the learned Magistrate chasing him in the

committal proceedings which has been transferred to the list of Long Pending Cases consequent to his non-availability.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His absence earlier was not wilful. It was due to reasons beyond his control. He is now willing to appear before the learned Magistrate and apply for bail. He is also willing to co-operate with the court for the expeditious disposal of the case; but he apprehends that his application for regular bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. In these circumstances, he prays that directions under Sec.438 and/or Sec.482 of the Cr.P.C. may be issued in his favour.

3. I do not find any reason to invoke the extraordinary equitable jurisdiction under Sec.438 of the Cr.P.C. or extraordinary inherent jurisdiction under Sec.482 of the Cr.P.C. in favour of the petitioner. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. He can certainly rely on the relevant findings, if any, already entered by the court in the course of trial of the co-accused in his attempt to claim bail before the learned Magistrate. I have no reason to assume that

the learned Magistrate would not consider the petitioner's application for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

4. In the result, this Crl.M.C. is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge